

**Maryland General Assembly  
Department of Legislative Services**

**Proposed Regulation  
Department of Health and Mental Hygiene  
(DLS Control No. 15-072)**

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## **Overview and Legal and Fiscal Impact**

The regulation authorizes the Board of Professional Counselors and Therapists to order the summary suspension of a license or certificate if the board determines that there is substantial likelihood that a licensee or certificate holder poses a risk of harm to the public health, safety, or welfare. The regulation establishes procedures for the summary suspension of a license or certificate relating to notice of the board's intent to summarily suspend a license or certificate, pre-deprivation hearings, post-deprivation hearings, and filing of exceptions.

The regulation presents no legal issue of concern.

There is no material fiscal impact on the State Board of Professional Counselors and Therapists and no fiscal impact on local agencies.

## **Regulation of COMAR Affected**

### **Department of Health and Mental Hygiene:**

Board of Professional Counselors and Therapists: Hearing Procedures:  
COMAR 10.58.04.10

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## **Legal Analysis**

### **Background**

According to the Department of Health and Mental Hygiene, the purpose of the regulation is to (1) authorize the board to order the summary suspension of a license or certificate if the board determines there is a substantial likelihood that a licensee or certificate holder poses a risk of harm to the public health, safety, or welfare; (2) require the board to give the respondent proper notice of the board's intent to summarily suspend the respondent's license or certificate and require that the notice include certain information; (3) establish a process by which the board is required to serve a respondent the notice of intent to summarily suspend; (4) authorize the respondent to request a pre-deprivation hearing before the board if the respondent is notified of the board's intent to summarily suspend the respondent's license or certificate; (5) establish procedures for the pre-deprivation hearing before the board; (6) authorize the board to summarily suspend a license or certificate without prior notice to the licensee or certificate holder under specified circumstances; (7) establish timelines for serving the order of summary suspension without prior notice and for the respondent to request a post-deprivation hearing before the board; (8) establish procedures for the post-deprivation hearing, including the burdens of production and proof; (9) provide that after a pre-deprivation hearing or after a post-deprivation

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hearing, the board may take specified actions; (10) provide that, if the board orders a summary suspension without prior notice to a licensee or certificate holder, the licensee or certificate holder is entitled to an evidentiary hearing before the board or an administrative law judge within a certain period time; (11) require an administrative law judge to issue a recommended decision to the board including certain information; (12) authorize both parties to a decision to file exceptions to the recommended decision in accordance with State law; and (13) provide that a summary suspension or final order of the board issued after a pre-deprivation hearing or a post-deprivation hearing is a final order of the board and a public record under State law.

## **Summary of Regulation**

### **Summary Suspension of a License or Certificate**

The regulation authorizes the board to order the summary suspension of a licensee or certificate holder if the board determines that there is substantial likelihood that a licensee or certificate holder poses a risk of harm to the public health, safety, or welfare. Based on information gathered in an investigation or otherwise provided to the board, the board may vote to issue: (1) a notice of intent to summarily suspend a license or certificate or (2) an order of summary suspension. The regulation specifies the content of a notice of intent to summarily suspend a license or certificate. The board is required to serve a respondent with a notice of intent to summarily suspend a license or certificate no later than 5 days before a pre-deprivation show cause hearing is scheduled before the board. The regulation specifies procedures for service of the notice of intent.

### **Predeprivation Opportunity to Be Heard**

If the board issues a notice of intent to summarily suspend a license or certificate, a respondent may request an opportunity to appear before the board to show cause why the respondent's license or certificate should not be suspended. The regulation requires the hearing to be a nonevidentiary hearing to provide the parties with an opportunity for oral argument on the proposed summary suspension. The regulation specifies additional procedures for the conduct of the hearing.

### **Summary Suspension Without Prior Notice or Hearing Opportunity**

If the board determines that the public health, safety, and welfare require the immediate suspension of a license and prior notice and an opportunity to be heard are not feasible, the board may, after consultation with board counsel, order the summary suspension of the license or certificate without first issuing a notice of intent or providing a respondent with an opportunity for a pre-deprivation hearing. An order of summary suspension is required to be served on the respondent within 48 hours after its execution. The respondent may request a show cause hearing before the board within 30 days after the effective date of the summary suspension. The request is required to be made within 10 days of the date of the notice of summary suspension. The regulation specifies requirements for the hearing and the burdens of production and persuasion.

## **Disposition**

If the board issues a notice of intent to summarily suspend a license or certificate before summarily suspending the license or certificate, the regulation authorizes the board, after a show cause hearing, to (1) order a summary suspension; (2) deny the summary suspension; (3) issue an order agreed upon by the parties; or (4) issue an interim order warranted by the circumstances of the case, including an order providing for a stay of the summary suspension subject to certain conditions.

If the board orders a summary suspension before a show cause hearing, the board may, at the conclusion of the hearing, vote to (1) affirm its order of summary suspension; (2) rescind its order of summary suspension; (3) issue an order agreed upon by the parties; or (4) issue an order warranted by the circumstances of the case, including one providing for a stay of the summary suspension subject to certain conditions.

## **Postdeprivation Opportunity for Evidentiary Hearing**

If the board orders the summary suspension of a license or certificate, a respondent may request an evidentiary hearing before the board, or if the board delegates the matter to the Office of Administrative hearings, before an administrative law judge. The respondent may request an evidentiary hearing within 10 days after the board issues the order of summary suspension. Unless otherwise agreed by the parties, a hearing is required to be provided within 45 days after the respondent's request. An evidentiary hearing may be consolidated with a hearing on charges issued by the board that include the facts that form the basis for the summary suspension. An evidentiary hearing is required to be conducted under the contested case provisions of Title 10, Subtitle 2 of the State Government Article.

If the board delegates the matter to the Office of Administrative Hearings, the regulation requires the administrative law judge to issue a recommended decision to the board with (1) proposed or final findings of fact; (2) proposed or final conclusions of law; (3) a proposed disposition; (4) any combination of proposed or final findings of fact, proposed or final conclusions of law, or a proposed disposition.

The parties may file exceptions to the recommended decision. An order issued by the board after a post-deprivation evidentiary hearing is a final order of the board and is a public record.

## **Legal Issue**

The regulation presents no legal issue of concern.

## **Statutory Authority and Legislative Intent**

The department cites §§ 17-205, 17-509, and 17-511 of the Health Occupations Article and §§ 10-205, 10-206, 10-216, and 10-226(c)(2) of the State Government Article as legal authority for the regulation. Section 17-205 of the Health Occupations Article authorizes the board to adopt regulations to carry out the provisions of law governing the practice of counseling and therapy. Section 17-509 establishes grounds for discipline of an applicant, licensee, or certificate holder. Before the board takes any action under § 17-509, § 17-511 requires the board

to give an individual against whom action is contemplated an opportunity for a hearing before the board.

Section 10-205 of the State Government Article authorizes a State board that is authorized to conduct a contested case hearing to conduct the hearing or delegate the authority to conduct the hearing to the Office of Administrative Hearings, or with specified approval, a person not employed by the office. Section 10-206 requires the office to adopt regulations to govern the procedures and practice in all contested cases delegated to the office. In addition, an agency is required to adopt regulations to govern procedures and practice before the agency in contested cases. Regulations adopted under § 10-206 may include procedures and criteria for requesting and conducting expedited hearings. An agency and the office may adopt regulations that provide for prehearing conferences in contested cases or set other appropriate prehearing procedures in contested cases. In the case of a single decision maker, if the final decision maker in a contested case has not personally presided over the hearing, § 10-216 prohibits a final decision from being made until each party is given notice of the proposed decision and an opportunity to file exceptions and present argument to the final decision maker that the proposed decision should be affirmed, reversed, or remanded. In the case of a decision-making body, if the majority of the officials who are to make a final decision in a contested case have not personally presided over the hearing, § 10-216 prohibits a final decision from being made until each party is given notice of the proposed decision and an opportunity to file exceptions and present argument to a majority of the officials who are to make the final decision. Section 10-226(c)(2) authorizes an officer or unit that is authorized by law to adopt regulations or adjudicate contested cases to order summarily the suspension of a license if the officer or unit: (1) finds that the public health, safety, or welfare imperatively requires emergency action; and (2) promptly gives the licensee written notice of the suspension, the finding, and the reasons that support the finding and an opportunity to be heard.

This authority is correct and complete. The regulation complies with the legislative intent of the law.

## **Fiscal Analysis**

There is no material fiscal impact on the State Board of Professional Counselors and Therapists and no fiscal impact on local agencies.

### **Agency Estimate of Projected Fiscal Impact**

The department advises that the regulation has minimal or no fiscal impact on State or local governments. The Department of Legislative Services concurs and notes that the board can likely handle any increase in disciplinary action within existing budgeted resources.

### **Impact on Budget**

There is no impact on the State operating or capital budget.

## **Agency Estimate of Projected Small Business Impact**

The department advises that the regulation has minimal or no economic impact on small businesses in the State. The Department of Legislative Services concurs.

### **Contact Information**

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